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BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against

No. D1-92-16665

ROBERT A. KLEIMAN, D.P.M.
3798 Janes Road, #13
Arcata, CA 95521

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

Podiatric Medicine Certificate No. E-1696,

Respondent.

JAMES H. RATHLESBERGER, complainant herein, charges and alleges
as follows:

1. He is the Executive Officer of the Board of Podiatric Medicine,
Department of Consumer Affairs, State of California (hereinafter "the Board") and
makes these charges and allegations solely in his official capacity.

LICENSE HISTORY

2. On or about **January 25, 1974**, respondent Robert A. Kleiman,
D.P.M. (hereinafter "respondent") was issued, by the Board, Certificate No. E-1696
authorizing him to practice medicine in the State of California. The certificate has
previously been disciplined and respondent is currently on probation to the Board as is

1 more specifically set forth below.

2 3. On or about **July 27, 1995**, an accusation was filed against
3 respondent's certificate alleging, *inter alia*, that in the care and treatment respondent had
4 provided to a patient, he had falsely and dishonestly represented himself as a licensed
5 physician and surgeon; that he had practiced medicine without a physician's license; that
6 he had employed homeopathic medicine, herbs, massage and religious readings to treat a
7 broken wrist; that he had falsely and dishonestly used the initials "M.D." after his
8 signature; that he had exceeded the scope of the practice of podiatric medicine
9 authorized by his license and that in regards to another patient he had likewise falsely
10 and dishonestly represented himself as an orthopedic surgeon; that he had practiced
11 medicine without a physician's license and that he had exceeded the scope of the practice
12 of podiatric medicine authorized by his license. Finally, it was further alleged that in a
13 presentation to a group of doctors in Buffalo, New York, respondent misrepresented
14 himself as a physician and an orthopedic surgeon and as a direct result of said
15 misrepresentation he was later employed and paid \$5,000 for treating a California patient
16 as a physician. Effective **March 3, 1997**, in case number 1B-92-16665, Office of
17 Administrative Hearings Case No. N-9511022, heard before Administrative Law Judge
18 Robert Walker, the Board adopted the ALJ's proposed decision and respondent's license
19 was revoked, the revocation was stayed, and respondent was suspended from the practice
20 of Podiatric Medicine for 30 days and placed on probation for five years with various
21 terms and conditions, including the following:

22 "1. The respondent is hereby ordered to reimburse the Board in the amount of
23 \$13,000 for the recovery of the reasonable costs of the investigation and
24 prosecution of this matter as provided for in Section 2497.5 of the Code.
25 Respondent shall pay the reimbursement as follows: Respondent shall pay
26 \$500 each month for 26 months with the first payment being due 60 days
27 after the effective date of this decision. Should the Board determine that
 his schedule of payment poses a financial hardship for respondent, the
 board may establish a schedule that provides for lower payments spread
 over a longer period of time. Should any part of the reimbursement not be
 paid, probation shall be extended until said amount is paid.

2. Respondent shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in California.
3. Respondent shall submit quarterly declarations, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, Respondent, during any cessation of practice, shall continue to submit quarterly declarations under penalty of perjury.
4. Respondent shall comply with the Board's probation surveillance program.
5. Respondent shall appear in person for interviews with the Board's medical consultant, on request, at various intervals and with reasonable notice.
6. In the event the Respondent fails satisfactorily to complete any provision of the order of probation, which results in the cessation of practice, all other provisions of probation other than the submission of quarterly reports shall be held in abeyance until Respondent is permitted to resume the practice of podiatry. All provisions of probation shall recommence on the effective date of resumption of practice. Periods of cessation of practice will not apply to the reduction of the probationary period.
7. In the event Respondent should leave California to reside or to practice outside the state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.
8. Upon successful completion of probation, Respondent's certificate will be fully restored.
9. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final. Further, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against Respondent.
10. Respondent shall submit satisfactory proof biennially to the Board of compliance with the requirement to complete fifty hours of approved continuing medical education for re-licensure during each two year renewal period.
11. Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a course in Ethics, which Respondent shall successfully complete during the first year of probation.

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12. Within 90 days of the effective date of this decision, Respondent shall provide proof to the Board or its designee of restitution in the amount [of] \$5,000 paid to Dr. R. Should the Board determine that his time limit for making restitution poses a financial hardship for Respondent, the board may establish a longer limit. Failure to pay restitution shall be considered a violation of probation."

A true and correct copy of the decision in Case No. 1B-92-16665, Office of Administrative Hearings Case No. N-9511022, before the Board, is appended hereto as Exhibit A and incorporated herein by reference.

FACTS

4. On multiple occasions, both over the telephone and in person, Respondent has discussed and had explained to him by a representative of the Board each of the terms and conditions of probation imposed by the decision against him. Further, on multiple occasions Respondent has made representations that he fully understood the terms and conditions of probation and the possible consequences of what would happen should he fail to comply with any of the terms and conditions.

5. Respondent has failed to fulfill a number of the terms and conditions of his probation to the Board in the following manner:

- a. Respondent has paid only **\$100** of the **\$13,000** ordered against him as the reasonable costs of investigation and prosecution. He has failed to pay the amounts owed, in a timely fashion, which as of the date of the Petition to Revoke Probation places him **\$10,400** in arrears of the cost recovery order; (calculated at \$500 per month from **May 1997** to **January 1999**, a period of 21 months).
- b. Respondent has failed to submit, in a timely fashion, the ordered quarterly reports. To date, he has submitted only two, out of the required seven such reports.
- c. Despite repeated assurances that he would comply with the terms and conditions of his ordered probation, Respondent has mislead and not

1 followed up on agreements he has made with his probation surveillance
2 officer.

3 d. Respondent has failed to submit written confirmation, in both terms of
4 quantity and quality, of the required continuing medical education required
5 for re-licensure.

6 e. Respondent has also failed to submit proof that he has made the ordered
7 restitution to Dr. R. in the amount of \$5,000.

8 **CAUSE FOR REVOCATION OF PROBATION**

9 6. Respondent's conduct as set forth in paragraphs 3 through 5, above,
10 is in violation of the conditions of respondent's probation set out in the decision in case
11 No. 1B-92-16665, as described in paragraph 3, above. The decision in case No. 1B-92-
12 16665 expressly authorizes the Board at paragraph (9), also set forth in paragraph 3,
13 above, to revoke respondent's probation and carry out the stayed disciplinary order if
14 respondent were to violate probation in any respect. Grounds therefore exist for
15 revoking respondent's probation in case number 1B-92-16665 and for carrying out the
16 disciplinary order that was stayed in that case.

17 **CAUSE FOR DISCIPLINE**

18 7. Respondent's conduct, as set forth in paragraph 6, above, constitutes
19 unprofessional conduct and an act involving dishonesty or corruption which is
20 substantially related to the qualifications, functions or duties of a podiatrist, especially in
21 light of the grounds for discipline in case number 1B-92-16665, and therefore, cause
22 exists for disciplinary action pursuant to Business and Professions Code section 2234, via
23 sections 2222 and 2497 (a), derivatively.

24 WHEREFORE Complainant prays that the Board of Podiatric Medicine
25 hold a hearing on the matters alleged herein, and following the hearing, issue a decision:

26 1. Revoking the probation of respondent **Robert A. Kleiman, D.P.M.**,
27 in case number 1B-92-16665 and carrying out the disciplinary order that was stayed;

- 1 2. Revoking Certificate No. E-1696 to practice Podiatric Medicine
2 heretofore issued to respondent **Robert A. Kleiman, D.P.M.**;
3 3. Directing respondent to pay to the Board a reasonable sum for the
4 investigative and enforcement costs of this action; and
5 4. Taking such other and further action as is deemed just and proper
6 to protect the public health, safety, and welfare.

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8 DATED: January 11, 1999

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11 JAMES H. RATHLESBERGER
12 Executive Officer
13 Board of Podiatric Medicine
14 Department of Consumer Affairs
15 State of California

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Complainant

EXHIBIT A

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ROBERT A. KLEIMAN, D.P.M.
3798 Janes Road, No. 13
Arcata, CA 95521

License No. E-1696

Respondent.

Case No. 1b-92-16665


OAH No. N-9511022

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Podiatric Medicine as its Decision in the above-entitled matter.

This Decision shall become effective on March 3, 1997.

IT IS SO ORDERED January 31, 1997.


Robert Presley, President
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	Case No. 1B-92-16665
)	
ROBERT A. KLEIMAN, D.P.M.)	OAH No. N-9511022
3798 Janes Road, No. 13)	
Arcata, CA 95521)	
)	
License No. E-1696)	
)	
Respondent.)	
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PROPOSED DECISION

This matter was heard before Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, at Oakland, California, on October 1 and November 25, 1996.

Isa R. Rodriguez, Deputy Attorney General, represented the complainant, James H. Rathlesberger (Complainant).

Dario F. Robertson, Attorney at Law, represented the respondent, Robert A. Kleiman, D.P.M. (Respondent).

FINDINGS OF FACT

1. Respondent is a doctor of podiatric medicine. He holds a degree in podiatric medicine from the Ohio College of Podiatric Medicine, which, at the time he was graduated, was located on the campus of Case Western Reserve but was not affiliated with that institution. The Medical Board of California, Board of Podiatric Medicine (Board) issued license number E-1696 to Respondent on January 25, 1974.

2. In November of 1989 a Ms. S.W. of San Diego had an accident that resulted in her wrist being broken in five places. As of February 1990, the broken bones had healed; however, S.W.'s use of her hand was restricted. She had undergone surgery and wanted to avoid further surgery. A surgeon had advised her that, if she had further surgery, she might never again have the use of all of her fingers. She was depressed.

3. Respondent, who lived in California, was in Buffalo, New York, in February of 1990. He had become disenchanted with traditional medical care and had studied alternatives to it, including holistic approaches to healing. He had become interested in how to combine concerns for the mind, the body, and the spirit in effecting cures. He had studied dietary and health practices in Asia and the United States.

4. While Respondent was in Buffalo, some medical practitioners arranged for him to meet, informally, with a small group of doctors and dentists to discuss his experiences and theories. S.W. had a sister living in Buffalo who was a physician, a Dr. D.R., and she was among the people invited to attend. At the meeting the Respondent was introduced as Robert Kleiman, and Dr. R. asked what his credentials were. Respondent said that he was a foot specialist and that he had been educated on the campus of Case Western Reserve.¹ He did not say that he was a podiatrist.² Respondent then spoke on the subject of the effects of psychological and emotional well being on health. He discussed successes he had had in using exercise, herbs, and diet to treat orthopedic patients.

5. After the meeting Dr. R., believing that Respondent was a medical doctor, spoke with him concerning S.W., Dr. R.'s sister in San Diego. Respondent was returning to California, and it was agreed that he personally would go to S.W.'s home to supervise a program of orthopedic exercises, to give her herbs, and to help her learn to eat more healthfully. Dr. R. retained Respondent to provide four weeks of personal care for S.W. Dr. R. gave Respondent a check for \$5,000 made payable to Robert Kleiman, M.D., which he subsequently endorsed and cashed.³

6. Respondent intentionally misled Dr. R. He knew that she, incorrectly, understood that he was a medical doctor, and he accepted her engagement and her money knowing that she was laboring under that misunderstanding concerning his credentials. Dr. R. would not have retained a podiatrist to deal with her sister's wrist.

7. Dr. R. spoke with her sister by telephone and told her that she had engaged Respondent, a physician, to help her.

¹Case Western Reserve does have a medical school. As noted above, the Ohio College of Podiatric Medicine was located on the Campus of Case Western Reserve but was not affiliated with that school.

²Respondent does not call himself a podiatrist. He calls himself a foot specialist. On his business cards he uses the term foot specialist.

³In endorsing the check Respondent did not use the designation M.D.

Dr. R. told S.W. that she hoped that, as a result of Respondent's help, S.W. could avoid the need for further surgery.

8. Respondent returned to California, called on S.W., and devised a plan of treatment for her.

9. Respondent told S.W. that he was a surgeon.⁴ He told her, also, that he was a podiatrist. Respondent intentionally misled S.W. He knew that she, incorrectly, understood that he was a medical doctor, and he treated her knowing that she was laboring under that misunderstanding concerning his credentials.

10. Respondent met with S.W. once each week for seven weeks. He massaged her wrist, made recommendations concerning herbs and nutrition, and recommended that she buy a juicer. He also read passages to her from philosophical works that he believed could be inspirational.

11. Respondent's treatment did relieve S.W.'s pain, but it had no other effect--either positive or negative.

12. There have been no other known disciplinary actions against Respondent.

13. Complainant submitted certifications of costs totalling \$24,738. In view of the fact that the Complainant submitted no evidence in support of five out of 12 causes and failed to prove three others, the reasonable costs of investigation and prosecution in this case are \$13,000.

DETERMINATION OF ISSUES

1. By reason of the matters set forth in Findings numbers 5, 8, and 10, it is determined that Respondent engaged in the practice of medicine without a license. Thus, cause to suspend or revoke his license exists pursuant to Code⁵ sections 2234(a), 2052, 2497(a), and 2222.

2. By reason of the matters set forth in Findings numbers 4, 5, 6, and 9, it is determined that Respondent held himself out as a physician without having a certificate as a physician and surgeon. Thus, cause to suspend or revoke his license exists pursuant to Code sections 2234(a), 2054, 2497(a), and 2222.

3. The Complainant failed to prove that S.W.'s wrist was broken at the time Respondent treated her and failed to prove

⁴In fact, Respondent is qualified to perform surgery on the bones of the foot, and he has performed such surgery.

⁵All references to the Code are to the Business and Professions Code unless otherwise specified.

that the treatment Respondent devised was unprofessional or negligent. It is not obvious that a combination of massage, herbs, and change of diet could not be useful in helping someone in S.W.'s condition avoid the need for further surgery. Therefore, there was no showing that discipline should be imposed pursuant to the charging allegations in the third cause for discipline.

4. By reason of the matters set forth in Findings numbers 4, 5, 6, and 9, it is determined that Respondent engaged in acts of dishonesty that were substantially related to the qualifications, functions, or duties of a podiatrist. Thus, cause to suspend or revoke his license exists pursuant to Code sections 2234(e), 2497(a), and 2222.

5. By reason of the matters set forth in Findings numbers 5, 8, and 10, it is determined that the treatment Respondent provided exceeded the scope of the practice of podiatric medicine authorized by his license in that he treated S.W.'s wrist. Thus, cause to suspend or revoke his license exists pursuant to Code sections 2472, 2497(a), and 2222.

6. The Complainant offered no evidence in support of causes for discipline numbers 6 through 10. Therefore, there was no showing that discipline should be imposed pursuant to the charging allegations in those causes.

7. The Complainant failed to prove that Respondent, during his presentation at the meeting in Buffalo, represented that he was either a physician or an orthopedic surgeon. It is true that Dr. R. came away from that meeting with the impression that Respondent was a physician. Clearly, at least by the time she gave Respondent the check made out with the designation "M.D.", Respondent knew that she was laboring under a misunderstanding. Respondent is culpable for accepting the engagement and the money without disabusing Dr. R. of her misunderstanding. However, the weight of the evidence does not support a finding that Respondent, at the meeting, actually represented himself to be a physician or surgeon. Therefore, there was no showing that discipline should be imposed pursuant to the charging allegations in the eleventh or twelfth cause for discipline.

8. While there is cause to revoke Respondent's license there are some mitigating circumstances and substantial reason to conclude that it would not be against the public interest to suspend the revocation and place Respondent on probation for five years. Respondent made no misrepresentation as to the treatment he would provide and, in fact, did what he agreed to do. Respondent's treatment in no way injured S.W. To the contrary, it actually relieved her pain. Further, there are no other known disciplinary proceedings against Respondent, who has been licensed since 1974.

9. There is another important mitigating circumstance here. The things Dr. R. engaged Respondent to do were all things

that can appropriately be done by people who are not licensed. Providing instruction concerning orthopedic exercises and advice concerning herbs and nutrition are things that do not necessarily require medical training or licensure. Respondent's conduct would have been more blameworthy and more disturbing if he had undertaken to provide a form of treatment that more specifically depended on medical expertise. It is true, of course, that someone with medical training and experience might bring to bear an importantly different perspective on these things, and both Dr. R. and S.W. had a right to expect just that in this case. Nevertheless, it is relevant that Respondent did not undertake to perform surgery on S.W.'s wrist, to prescribe drugs, or to set a broken bone.

10. By reason of the matters set forth in Finding number 13, it is determined, pursuant to Code section 2497.5, that Respondent should pay costs of \$13,000.

ORDER

Certificate No. E-1696 issued to Respondent, Robert A. Kleiman, is revoked pursuant to Determination of Issues numbers 1, 2, 4, and 5 separately and all of them.

Certificate No. E-1696 issued to Respondent, Robert A. Kleiman, is suspended for 30 days pursuant to Determination of Issues numbers 1, 2, 4, and 5 separately and all of them.

However, the revocation is stayed, and Respondent is placed on probation for five years on the following terms and conditions:

1. The Respondent is hereby ordered to reimburse the Board in the amount of \$13,000 for the recovery of the reasonable costs of the investigation and prosecution of this matter as provided for in Section 2497.5 of the Code. Respondent shall pay the reimbursement as follows: Respondent shall pay \$500 each month for 26 months with the first payment being due 60 days after the effective date of this decision. Should the Board determine that this schedule of payments poses a financial hardship for Respondent, the Board may establish a schedule that provides for lower payments spread over a longer period of time. Should any part of the reimbursement not be paid, probation shall be extended until said amount is paid.
2. Respondent shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in California.
3. Respondent shall submit quarterly declarations under penalty of perjury, on forms provided by the


Board, stating whether there has been compliance with all of the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, Respondent, during any cessation of practice, shall continue to submit quarterly declarations under penalty of perjury.

4. Respondent shall comply with the Board's probation surveillance program.
5. Respondent shall appear in person for interviews with the Board's medical consultant, on request, at various intervals and with reasonable notice.
6. In the event the Respondent fails satisfactorily to complete any provision of the order of probation, which results in the cessation of practice, all other provisions of probation other than the submission of quarterly reports shall be held in abeyance until Respondent is permitted to resume the practice of podiatry. All provisions of probation shall recommence on the effective date of resumption of practice. Periods of cessation of practice will not apply to the reduction of the probationary period.
7. In the event Respondent should leave California to reside or to practice outside the state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of California will not apply to the reduction of this probationary period.
8. On successful completion of probation, Respondent's certificate will be fully restored.
9. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final. Further, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against Respondent.
10. Respondent shall submit satisfactory proof biennially to the Board of compliance with the requirement to complete fifty hours of approved continuing medical education for re-licensure during each two year renewal period.

11. Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a course in Ethics, which respondent shall successfully complete during the first year of probation.
12. Within 90 days of the effective date of this decision, Respondent shall provide proof to the Board or its designee of restitution in the amount \$5,000 paid to Dr. R. Should the Board determine that this time limit for making restitution poses a financial hardship for Respondent, the Board may establish a longer limit. Failure to pay restitution shall be considered a violation of probation.

DATED:

December 22, 1996



ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings